

“[D]istrict courts are permitted . . . to consider, sua sponte, the timeliness of a state prisoner’s habeas petition.” *Day v. McDonough*, 547 U.S. 198, 209, 126 S. Ct. 1675, 164 L. Ed. 2d 376 (2006). Title 28 U.S.C. § 2244(d)(1) provides “[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.” Garza’s conviction became final August 15, 2008, thirty days after the entry of his judgment of conviction by the trial court when his time to file a direct appeal expired. *See* Tex. R. App. P. 26.2(a)(1). There was an approximate twenty-five month and one week interval between the time his conviction became final and the filing of his federal Petition on September 23, 2010. Garza’s State application was filed after the one-year statute of limitations expired and thus had no tolling effect. Therefore, Garza’s federal Petition is apparently barred by limitations. *See* 28 U.S.C. § 2244(d)(1)(D).

Therefore, **this Court directs Petitioner Garza to show cause within twenty-one (21) days why his Habeas Corpus Petition should not be dismissed for failure to present grounds for habeas corpus relief and as barred by limitations.** If Petitioner fails to respond to this Order, his Petition will also be dismissed for failure to prosecute and failure to comply with the Orders of this Court pursuant to Fed. R. Civ. P. 41(b). *See Martinez v. Johnson*, 104 F. 3d 769, 772 (5th Cir. 1997).

SIGNED on October 21, 2010.

A handwritten signature in black ink, reading "Nancy Stein Nowak", written over a horizontal line.

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE